

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EDWIN HANNON and BRANDIE
HANNON,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Case No.: 14-CV-05381-LHK

**ORDER VACATING HEARING ON
ORDER TO SHOW CAUSE,
GRANTING MOTION TO DISMISS
WITH LEAVE TO AMEND, AND
CONTINUING CASE MANAGEMENT
CONFERENCE**

Plaintiffs Edwin and Brandie Hannon (“Plaintiffs”), with the assistance of counsel, filed their amended complaint in Monterey County Superior Court on November 6, 2014. ECF No. 1-1 Ex. A. Defendant Wells Fargo Bank, N.A., successor by merger with Wells Fargo Bank Southwest, N.A., f/k/a Wachovia Mortgage, FSB, f/k/a World Savings Bank, FSB (“Wells Fargo”) received service of process on November 7, 2014. ECF No. 1 at 5. On December 8, 2014, Wells Fargo removed the instant case to federal court. *Id.* at 6.

On January 5, 2015, Wells Fargo filed a Motion to Dismiss Plaintiffs’ lawsuit, arguing, inter alia, that Plaintiffs’ claims are barred by the doctrine of judicial estoppel and by the applicable statutes of limitations. ECF No. 11. Pursuant to Civil Local Rule 7-3(a), Plaintiffs’

1 Opposition to the Motion to Dismiss was due on January 20, 2015.¹ Plaintiffs filed none. As a
 2 result, on March 16, 2015, the Court issued an Order for Plaintiffs to show cause why this case
 3 should not be dismissed for failure to prosecute. ECF No. 15.

4 Pursuant to the Court's Order to Show Cause, Plaintiffs filed a response on March 26,
 5 2015. ECF No. 17. In that response, Plaintiffs' counsel explained that he had experienced heart
 6 problems beginning in November 2014. *Id.* at 2. While the Court appreciates the medical
 7 challenges facing Plaintiffs' counsel, the Court notes that Plaintiffs' counsel says he realized he
 8 had not filed an Opposition on February 16, 2015—a full month before the Court issued its Order
 9 to Show Cause. *Id.* at 4. In that time period, Plaintiffs' counsel never alerted the Court of his
 10 medical condition or asked for an extension of time to file an Opposition, as he was obligated to
 11 do.

12 In light of the foregoing, the Court declines to dismiss Plaintiffs' lawsuit for failure to
 13 prosecute and hereby VACATES the hearing on the Order to Show Cause set for April 2, 2015, at
 14 1:30 p.m. However, pursuant to Civil Local Rule 7-1(b), the Court hereby GRANTS Wells
 15 Fargo's Motion to Dismiss with leave to amend and VACATES the hearing on the Motion to
 16 Dismiss set for April 9, 2015, at 1:30 p.m. Plaintiffs are hereby on notice of the alleged
 17 deficiencies with their Complaint that Wells Fargo has identified in its Motion to Dismiss. Should
 18 Plaintiffs elect to file an amended Complaint, Plaintiffs shall do so within thirty (30) days of the
 19 date of this Order. Failure to meet the thirty-day deadline to file an amended Complaint or failure
 20 to cure the deficiencies identified by Wells Fargo in its Motion to Dismiss will result in a
 21 dismissal with prejudice of Plaintiffs' claims. Plaintiffs may not add new causes of action or
 22 parties without leave of the Court or stipulation of the parties pursuant to Rule 15 of the Federal
 23 Rules of Civil Procedure.

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 27 ¹ January 19, 2015, was a federal holiday.

The Court hereby CONTINUES the initial case management conference set for April 9, 2015, at 1:30 p.m. to June 17, 2015, at 2:00 p.m.

IT IS SO ORDERED.

Dated: March 30, 2015



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California